Elder Abuse in Kashmir: A Functional Evaluation of Law and Policy

PhD Synopsis

Scholar	**Samreena Bashir**
Enrolment Number	21154CUKmr003
Date of Registration	20 September 2021
Supervisor	**Prof. Farooq Ahmad Mir** Department of Law Central University of Kashmir
Department	**Law**
School	**Legal Studies**

Central University of Kashmir
Ganderbal, J&K

Elder Abuse in Kashmir: A Functional Evaluation of Law and Policy

1. Introduction

"Aging is not 'lost youth' but a new stage of opportunity and strength".

Betty Friedan[1]

Life is a precious gift from God to humans. "The human life consists of different phases which are infancy, childhood, puberty, adulthood, middle age and old age".[2] The most relaxing and peaceful phase of our life is old age[3]. "As it is that stage of our life where we sit back peacefully and have a look on our life journey, our achievements, our vicissitudes and feel contended".[4] "When we enter into the old age we experience some physical changes in our body which diminishes our ability to perform activities essential to live individually without any assistance in the society".[5] People in this phase are required to be assisted emotionally, financially, physically or mentally. Definitions of old age are not consistent from the standpoints of biology, demography (conditions of mortality and morbidity), employment and retirement, and sociology.[6] However, "for statistical and public administrative purposes, old age is frequently defined as 60 or 65 year of age or older. Old age is not a definite biological stage, as the chronological age denoted as 'old age' varies culturally and historically"[7].

Over the past few decades, the world population has traversed its course of demographic transition from the states of high birth and death rates to the states of low birth and death rates[8]. Globally, the share of elderly population is on rise. In 1990, "elderly population (aged 60 or above) constituted 6 % of the population which rose to 9 % in 2019 and is projected to reach 16% by 2050. In Indian context, the percentage of elderly has increased from 5.4 % in 1951 to 8.6% in 2011 and is projected to reach 20% by 2050"[9].

"The changing demographic profile has thrown many new challenges in social, economic and political domains. With such a huge proportion of population as that of elders it lays an extra

[1] An American writer and activist.

[2] Elder Abuse, *Legal Services India*, 10th Feb 2021.Available at: https://www.legalservicesindia.com/law/article/elder abuse(visited on 9th July 2022)

[3] Ibid

[4] Id

[5] Id

[6] Available at: https://wikipedia.org/wiki/old_age (visited on 10th July 2022)

[7] Ibid

[8] Bhavesh Garg, Karan Rai, *Demographic transition: India can reap rich dividends with right policy focus,* Dec 20, 2022. Available at: https://www.thehindubusinessline.com)

[9] Report *' elderly in India – 2021'* published by National Statistics Office (NSO), which falls under the Ministry of Statistics and Programme Implementation . Available at https://ruralindiaonline.org/en/library/resources/elderly-in-india (visited on 15th July 2022)

burden on the governments to take care of them"[10]. The studies conducted by various governmental and non - governmental organizations have examined that, "elder abuse is occurring due to advent of various socio- economic changes like urbanization, globalization, modernization, increase in women's participation in economic activities, mobility of younger generation, growth of individualism, breakdown of joint family structure etc"[11]. Few decades ago, elderly were the most respectful members in the joint family but such values are fast disappearing now, as the family members particularly the working members have very less or no time to give and provide prompt care to the elders[12]. "The growing generation gap, difference in thinking and attitude towards expectations, and living conditions or lifestyle of children have affected the presence and lives of elderly in their own family. In addition to it, the limiting family size, expanded financial burden, aspiration of children for better or elite way of living, somewhere, are sidelining the attention which is required by helpless elderly. Elderly people are seen as a burden which nobody wants to carry"[13]. According to United Nations, "elderly abuse, neglect, violence and exploitation are one of the biggest issues that seniors are facing around the world".

Elder Abuse: A Concept

According to World Health Organization (WHO)**, "**Elder abuse (also called as elder mistreatment, senior abuse, abuse in later life, abuse of older adults, abuse of older men & women) is a single or repeated act or lack of appropriate action, occuring within any relationship where there is an expectation of trust, which causes harm or distress to an older person". Abuse against the elders can be committed by any person not necessarily by his/her children only. It can be done by anybody like one's own partner, some family member or a relative or some other person on whom an elderly person is dependent. The various types of elder abuse as recognized by WHO are [14] :-

*1. Physical Abuse : "*The use of force against an elderly person with intention which results into his physical harm which may range from physical pain to death".[15]

2. Emotional Abuse : "An act done with the intention to inflict mental pain, fear, or distress on an elderly person and results into emotional or psychological pain. It may include insulting, isolation, humiliation, intimidation and name calling".[16]

---

[10] Ibid
[11] Ram Ahuja, *social problems in India*, Rawat Publications (Ed. 4th), 2017
[12] Ibid
[13] Available at, https://www.legalservicesindia.com/law/article/1832/15/elder-abuse (visited 10 July 2022)
[14] Elder Abuse. Available at https://en.wikipedia.org/wiki/Elder_abuse
[15] Supra note,2
[16] Id

*3. Sexual Abuse : "*Sexual interaction of any kind with an elderly person without their consent, which is very unwanted is termed as sexual abuse. Some of the symptoms of sexual abuse may include- bleeding from anus or genitals, newly sexually transmitted diseases, pain of anus or genital, pelvic injuries etc"[17]

*4. Financial Abuse : "*Financial abuse against elders is committed when a person who is in a trusted relationship with the elderly person is illegally, un-authorizedly or improperly using that elder's resources. This kind of abuse can take place with the people who are unable to understand their financial statements or conditions because of old age".[18]

*5. Neglect : "*Neglect of elderly people happens when the person responsible for the care and protection of the elderly fails to protect the elder from harm or fails to meet the needs of elders which result into risks or serious injury. Neglect is the deliberate attempt of carelessness or having little or no regards for the wellbeing of an elderly person. It may include depriving elders from basic needs like - shelter, clothing, health upkeep or nutrition needs".[19]

"Elder abuse was first recognized as a social problem in the 19th century but was brought to forefront only in 1980's[20]. Reference to the problem of elder abuse started to appear around 1970 in UK and other European Countries. Mistreatment of elderly was referred to as 'elder abuse' in British Scientific Journal in 1975 under the term *granny battering"*[21]. In the past few years since the concept of elder abuse is gaining much attention of the people throughout the world, different measures have been taken at the international level[22]. The World Health Organization has "earmarked June 15 as world elder abuse awareness day and the earmarking of this day is to serve a reminder about the harms inflicted upon elders. The United Nations has declared the decade from 2021- 2030 as the Decade of Healthy Aging and this 10 year time period will be an opportunity to develop the ways to tackle the abuse of elderly. Despite these measures taken at the International level it has been reported by United Nations in 2018 that around 1 in 6 people aged 60 years or above experienced some form of abuse". And

[17] Tanya Singh,Geriatric Sexual Violence in India: Studying State-wise and year-wise trends, ISSN, Vol II ,2020. Available at https://maitreyi.ac.in/Datafiles/cms/2020/magzine/issue

[18]Elder Abuse. Available at https:// www.legalservicesindia.com/law/article/elder-Abuse (accessed on 10th july 2022)

[19] Ibid

[20]Amandeep Singh, *Elder Abuse: its Evolution and Forms*, IJCRT, vol 6,Jan 2018. Available at https://www.ijcrt.org

[21] Ibid

[22] For more details see, https://shodhganga.inflibnet.ac.in (visited 10th July 2022)

various studies have revealed that rates of elder abuse have increased during COVID- 19 pandemic[23].

The International Network for Prevention of Elder Abuse (INPEA) in its "2016 report mentioned India as the leading Asian country in terms of elder exploitation and abuse". Currently, there is no official statistics available relating to the prevalence of elder abuse in India[24]. However, a study made by Help Age India[25] has made some observations that, "in India more than one fifth of the elders have experienced abuse and around 7 out of 20 have been the victim of abuse on daily basis. In India, a majority of elders are believed to be abused or neglected at various levels. National Crime Records bureau in 2013 reported that 40,735 elders have been murdered in all over India between 2001 to 2012". The abuse against elders have also been documented by other reports of various non-governmental organizations. Elder abuse occurs but with little recognition or response. In Jammu & Kashmir too, several elder abuse cases have surfaced but it is just a tip of the iceberg as the seniors prefer to maintain a silence over the issue. Even today in 21st century elder abuse continues to be a taboo, underestimated and ignored by the societies across the globe more particularly in Kashmir. Despite this, it has obvious social and moral significance. And as such it demands a multifaceted response, which will focus on the protection of rights of older persons.[26]

2. Review of Literature and Identification of Research Gap

International literature survey

Lori A. Stiegel, *"Legal issues related to elder abuse",* Bureau of Justice Assistance U.S. Department of Justice, 2014. "It provides a guide to understand the meaning of elder abuse and the various types of elder abuses which elder persons face from their relatives including their children. It provides brief explanation of legal concepts, documents, and tools that may be used to commit elder abuse or used properly to remedy it. Also provides what actions justice system professionals should consider if they suspect elder abuse has occurred".

Key words; *meaning of elder abuse, types of elder abuse, legal concepts of elder abuse.*

Xinqi Dong, *"Elder abuse",* Springer cham publications, (Ed. Ist), 2017. "This book addresses the epidemiology of the issue and the global prevalence of elder abuse in both developed and developing countries which synthesizes the most up-to- date data about risk

[23] Ibid
[24] Ram Ahuja, *social problems in India*, Rawat Publications (Ed. 4th), 2017
[25] A non-governmental organization working for the protection of elders in India.
[26] Supra note 10

factors and protective factors associated with elder abuse, screening, management of elder abuse".

Key words*; global prevalence of elder abuse in both developed and developing countries.*

National literature survey

Punita Govil & Swati Gupta, "*Domestic violence against Elderly people: A case study of India",* Advances in Ageing Research, vol. 5, pp. 110- 121 (September 2016). "This Article describes the available data on the old people, their dependence ratio, the problems being faced by them and suggestive measures to provide social and emotional security to them. This article discusses the percentage of reporting abuse among the elders. And discusses the reasons for not reporting the elder abuse cases".

Key words; *elder abuse reporting, reasons for not reporting elder abuse.*

Daliya Sebastian, *"Ageing and Elder Abuse",* Rawat Publications New Delhi, (2013). "This book is based on field work conducted between 2012 & 2013, talks about the demographic transition in India. The result of this transition has led to the growth in the number and proportion of elderly. There are the incidences of abuse faced by elders within the family set up. The book talks about the extent and nature of abuse faced by elderly in family as well as institutional setting, and also their living arrangement, support mechanism and interaction with 2nd and 3rd generations".

Key words; ***demographic transition, nature & extent of elderly abuse in India.***

M. Ramachandran, *"older persons & International human rights framework: Arguments for a specific international convention",* Journal of ILI, 56(4), 2014,pp 523-549. "This study talks about the elder abuse is not only a social concept now it has been recognized as a human right concept by various International organizations. Even today in 21st century elder abuse continues to be a taboo, underestimated and ignored by the societies across the globe. Despite this, it has obvious social and moral significance. And as such it demands a global multifaceted response, which will focus on the protection of rights of older persons".

Key words; *elder abuse as human right violation, special convention on elder abuse*

Mohamad Saleem & Aneesa Shafi, "*Marginalized and Alienated Elderly of Kashmir: Contesting their space in the family and society",* in book, Ageing issues in India, practices, perspectives and policies (pp. 143- 156), December 2021. "The paper attempts to explore different forms of suffering that the elderly (60 years and above) in Kashmir face within families and the broader society. It argues that the changes which the society has witnessed over a period of time have created an atmosphere of individualism and opportunism among

the youth and a spontaneous hostility towards the elderly. The socio -cultural and religious values of Kashmiri society situated the elderly at a dignified place; however, the recent advancements within the society and the lack of preparedness to deal with the subsequent challenges have further marginalized and alienated the elderly in and outside the family setting".

Key words; ***socio cultural and religious values of Kashmiri society, individualism and opportunism among youth in Kashmir.***

Showkat , H. (2016): in this study titled *" Need of old age homes: A sociological study in Srinagar District,* reveals the need of establishment of old age homes is of utmost importance. He points out that the elders feel that their respect And dignity etc will be protected and secured in such a place. The majority of the elderly especially from middle and lower income groups wants to stay with their families. Even though they want to have a daily care and day care units".

Key words; ***need of establishment of old age homes in Kashmir, day care units for elders.***

Rafiq, M, Yasmeen, Ashfaq, & Rifat (2016): in this work *"Health problems of elderly in district Budgam,* reveals that not much studies has been done in this study area, and the study highlights the health problems of the elderly. The study recommended to the government that special surveys should be conducted to identify the vulnerable ages and focus should be on the deprivations suffered by them"**.**

Key words; ***health problems of elderly, conduct special surveys to identify vulnerable ages.***

Mohd Anzar Warr, Tarif Hamid Akhoon & Zahoor Ahmad: this study titled *"socio-psychological problems of elderly in Kashmir with special reference to Srinagar district,* reveals the various problems of elderly in Kashmir. This paper also reveals how urbanization, industrialization and globalization have cast their shadow on traditions values and norms of Kashmiri society".

Key words*; socio- psychological problems, traditional values*

3. Research Gap:

After reviewing the existing literature regarding elder abuse in Kashmir it came to the light that there is currently no work available on the implementation of laws and policies relating to elder abuse. Despite the increasing attention on the topic of elder abuse, empirical studies on how far the law and policy related to elder abuse is functional in Kashmir is still Lacking. The researches carried out in this field are from the sociological point of view, and no such

research from the legal point of view has been carried out till date. So there is a need to investigate about the neglect of elder abuse and the functionality of laws & policies.

4. Statement of Research Problem

In India "the concept of elder abuse started to get recognition only in 1990's as it was never considered as a problem where joint family system used to prevail and remain always hidden within the privacy of the home. Elder abuse has always been thought of as a western problem. For the protection of elderly people various provisions were inserted in different laws and special policies were formulated by the Government of India. But in 2007 owing to the growing need to have a specific legislation for elderly people, The Maintenance and welfare of Parents and Senior citizens Act, was passed. However, despite these laws and policies relating to elderly people, the cases of abuse against elders are increasing with each passing year. It is high time to put these laws and policies to the reality check and to understand whether these laws and policies are sufficient in order to protect the elders from the abuse or there is a need to amend these laws and policies".

In Kashmir "where the religious and cultural norms are as such that they lay stress on showing respect and providing care for the elderly. Elder abuse is generally under-noticed by the society, research scholars and the people in general. However few researchers in the recent years turned to inquiries in the field of elder abuse but that is not enough to present the perfect picture of the abuse that is prevalent in Kashmir. And there is no official statistics available regarding the prevalence of elder abuse in Kashmir which poses unavoidable difficulties for researchers. This is the reason that very less work on elder abuse is available".

In the above backdrop the researcher has taken the topic, '**Elder Abuse in Kashmir :A Functional Evaluation of Law and Policy'**, "there is a need to investigate the prevalence of elder abuse in Kashmir and to inquire about how for law and policy related to elder abuse are functional in Kashmir, which inter alia focuses on the need to have the existing laws amended in order to be more stringent so that people will behave in a more reasonable manner and to create awareness among the elders regarding their rights and reliefs under different laws and policies".

5. Objectives of The Study

1. To evaluate the position of elders and their rights from historical perspective.
2. To analyze various laws and policies in India dealing with the prevention of elder abuse

so as to identify grey areas that require amendments/ improvements to ameliorate the plight of elderly people.

3. To examine the role of Indian Judiciary to promote the welfare of Elderly persons through law.
4. To appraise efficacy of laws and policies for preventing elder abuse and for promotion of their welfare through empirical evidence in Kashmir.

6. Research Questions

1. Whether all International standards for prevention of elder abuse have found place in Indian constitutional and legislative framework.
2. Whether the Indian Judiciary is playing active role in preventing elder abuse and promoting their welfare.
3. Whether the laws and policies meant to prevent elder abuse and promote their welfare are implemented in letter and spirit in Kashmir.

7. Hypotheses

1. Elder abuse is prevalent in Kashmir but is not reported.

2. The existing law and policy relating to Elder abuse are neither sufficient nor implemented in letter and spirit in Kashmir.

8. Research Methodology

In order to "accomplish this research work and to yield the desired result, the researcher will subscribe to both Doctrinal and Empirical methods of study. The data will be deducted from both primary and secondary sources".

Doctrinal method

It will cover the data collection from various books, publications, records, case laws, web sites, articles, journals, research papers and so on.

Empirical method

This section will "discuss in detail the research design of the study, methods of collecting data, sample selection, research techniques and instruments and the statistical techniques to be used for the analysis of the data".

Research Design: The "research design outlines the methods and procedures for collecting and interpreting data. The study is of such a nature that it will include the combination of qualitative, quantitative and descriptive approaches. The study will be carried out to get the insights about the implementation of law and policy related to elders in Kashmir".

Study Area: The study will be carried out in Kashmir region. As the Kashmir division consists of 10 districts, it means the data to be collected will be huge that will be difficult to analyze through tables and diagrams. So, the study area will be divided into 3 regions which will consist of 6 districts, so that 60% of the population is represented. These six regions will be- **North region** – data will be collected from district Baramulla & Bandipora, -**Central region** – data will be collected from district Srinagar & Ganderbal, - **South region**- the data will be collected from district Anantanag & Pulwama.

Population of study: The respondents will be divided into different categories – elders, general public, police, lawyers & judges. And the primary responses from various institutions like courts, old age homes, the ministry of social welfare, non-governmental organizations, Media will also be gathered.

Techniques and instruments: The various tools and techniques to be employed in getting the data will be administration of questionnaire to the general public. And interview-schedule method will be used to get the responses from other respondents.

9. Chapterization

Chapter first ***'Introduction'***, will provide "the general introduction of the concept of Elder abuse, the statement of the research problem, the objectives of the study, the hypotheses formulated. The review of the existing literature on the subject and the research methodology to be employed by the researcher in this study. It will introduce the focus of the study and will also present a structure of the thesis".

Chapter second ***'Historical perspective of position of senior citizens in India',*** will deal with the position of elders during vedic, medieval and muslim period. The chapter will also include the detailed discussion on various religious scriptures dealing with the elders.

Chapter third ***'Legislative and Judicial approach to prevent elder abuse',*** as the title suggests this chapter will deal with the detailed study of the relevant laws & constitutional provisions which offers for the protection of elders in India. It will also include the detailed discussion on the role of judiciary in protecting the rights of the elders.

Chapter fourth ***'Role of State and non- state entities in elderly care',*** will include the detailed discussion on the government policies and programs as well as the role of Non-Government organizations for elderly care in India in general and in Kashmir in particular.

Chapter fifth ***"Empirical analysis of implementation of laws and policies for prevention of elder abuse and the welfare of elderly persons in Kashmir", will*** deal with the data collected from the field in Kashmir. And the data collected will be analyzed under the object of hypothesis.

Chapter sixth ***"conclusion & suggestions",*** will summarize and will draw the conclusions of the study. This chapter will conclude the research with findings and will provide suggestions for improvement.

10. Recent Citations

Books and Articles:

V. Thyagaraj(ed.),The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Karnatka Law Reporter Publications Bengaluru , 2022

Ram Ahuja, *social problems in India*, Rawat Publications (Ed. 4th), 2017

S.N. Misra, Criminal Procedure Code, 1973, Central Law Publication (Ed. 11th), 2013

Durga Das Basu, Introduction to the Constitution of India, Lexis Nexis (Ed. 22nd),2016

Daliya Sebastian, "Ageing and Elder Abuse", Rawat Publications New Delhi, (2013).

Dr. Abdul Majid & Dr. Aijaz Suhaff, "Elderly Abuse: A harsh reality in modern world", The Rising Kashmir, published on 26 September 2021.

Himanshu chaurasia , " Abuse, neglect and disrespect against older adults in India", Journal of population ageing, spring charm publications (2015)

Help Age India. (2010).Directory of Old age homes in India, Research and development division: New Delhi

Andrew, M.K.(2008). Social Capital, health and care home residence among older adults: A secondary analysis of the health survey for England 2000. European Journal of Ageing, 2, 137-148.

Mohamad Saleem & Aneesa Shafi, "Marginalized and Alienated Elderly of Kashmir: Contesting their space in the family and society", in book , Ageing issues in India, practices, perspectives and policies (pp. 143- 156), December 2021.

Kenneth J. Steinman & Georgia J. , " Measuring the diverse characteristics of country adult protective services programs", Journal of Elder abuse & Neglect, vol 34, Issue 3(2022)

Dr. Debanjan Banerjee , " How to eliminate the evil of elder abuse" , The Indian Express, published on 15 June 2022.

WEBSITES:

Elder abuse in India. Available at, https://www.rgaa.co.in/laws-relating - elder-abuse-in-India. (visited 12 july 2022)

Domestic violence against Elderly people: A case study of India", Advances in Ageing Research, vol. 5, pp. 110- 121 (September 2016).

Elder Abuse: its Evolution and Forms. Available at https://www.ijcrt.org

Available at, https://www.scirp.org/journal/paperinfornation.aspx

Elder abuse in India. Available at: https://shodhganga.inflibnet.ac.in

Old age, Wikipedia. Available at: https://wikipedia.org/wiki/old_age (visited on 10th July 2022)

Elder Abuse. Available at: https://www.legalservicesindia.com/law/article/1832/15/elder-abuse